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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,293	04/14/2004	Theodore George Frazier	TF0001	6062
36489 7590 01/03/2007 LEYENDECKER LEMIRE & DALEY, LLC C/O PORTFOLIO IP P.O. BOX 52050 MINNEAPOLIS, MN 55402			EXAMINER LEON, EDWIN A	
			ART UNIT 2833	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/03/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/824,293

Applicant(s)

FRAZIER, THEODORE GEORGE

Examiner

Edwin A. León

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/14/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 17 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Monici et al. (U.S. Patent No. 3,474,180). With respect to claim 17, Monici discloses (in Figs. 1-2) a method comprising: providing a tensioned cord (6); and repeatedly striking the cord with one or more drumsticks (Column 2, Lines 54-55).

With respect to claim 19, Monici discloses (in Figs. 1-2) the tensioned cord being an elastic cord (6).

With respect to claim 20, Monici discloses (in Figs. 1-2) the repeatedly striking the cord with one or more drumsticks further practicing the rudiments of drumming.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-13 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett (U.S. Patent Publication No. 2004/0025664) in view of Monici et al. (U.S. Patent No. 3,474,180). With respect to claims 1, 6 and 8, Bennett discloses (in Figs. 1-2) an apparatus for practicing drumming comprising a practice bar (3) suspended between and coupled to a first pair of arms (2), the first pair of arms coupled to a base (1).

Bennett discloses substantially the claimed invention except for the use of a tensioned first elastic cord, the tension of the elastic cord is user adjustable and a tensioning mechanism adapted to selectively adjust a level of tension in the first elastic cord.

Monici et al. teaches (in Figs 1-2) an apparatus having a tensioned cord (6); and repeatedly striking the cord with one or more drumsticks (Column 2, Lines 54-55), the tension of the elastic cord is user adjustable and a tensioning mechanism adapted to selectively adjust a level of tension in the first elastic cord.

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the apparatus of Bennett by changing the bar for a tensioned cord, the tension of the elastic cord is user adjustable and a tensioning mechanism adapted to selectively adjust a level of tension in the first elastic cord as taught in Monici et al. in order to simulate the percussive sounds of a drum when a struck by a drumstick (Monici et al., Column 1, Lines 25-28).

With respect to claim 2, Bennett discloses (in Figs. 1-2) the first pair of arms and a base portion (1) spanning between the first pair of arms comprising a generally U-shaped bracket.

With respect to claim 3, Bennett discloses (in Figs. 1-2) the first pair of arms being coupled to the base and the base comprises a drumming practice pad (Claim 2).

With respect to claim 4, Bennett discloses (in Figs. 1-2) the first pair of arms extending substantially perpendicularly from the base portion.

With respect to claim 5, the combination of Bennett and Monici et al. discloses substantially the claimed invention except for at least one multi-filament elastomeric cord at least partially covered by a fabric sleeve.

Still, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have at least one multi-filament elastomeric cord at least partially covered by a fabric sleeve, since it has been held to be within the general ordinary skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 9, the combination of Bennett and Monici et al. discloses substantially the claimed invention except for the first pair of arms being spaced from each other a distance of about 10-12 inches.

Still, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first pair of arms being spaced from each other a distance of about 10-12 inches, since it has been held that where the general conditions

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of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claim 10, the combination of Bennett and Monici et al. discloses substantially the claimed invention except for a second pair of arms and a second tensioned elastic cord.

Still, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second pair of arms and a second tensioned elastic cord, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With respect to claims 11 and 13, Bennett discloses (in Figs. 1-2) a drumming practice apparatus comprising: a bracket (2, 1) including at least two arms (2) spaced apart from each other and a base portion (1), the base portion joining the two arms together; and a practice bar (3), the practice bar extending between the at least two arms and being attached to each of the at least two arms.

Bennett discloses substantially the claimed invention except for the use of a tensioned first elastic cord, the tensioned cord is adapted to deform elastically and resiliently when the tensioned cord is struck with a drumstick, the tensioned cord comprises an elastic cord that is adapted to stretch when impacted by a drumstick.

Monici et al. teaches (in Figs 1-2) an apparatus having a tensioned cord (6), the tensioned cord is adapted to deform elastically and resiliently when the tensioned cord

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is struck with a drumstick (Column 2, Lines 54-55), the tensioned cord comprises an elastic cord (6) that is adapted to stretch when impacted by the drumstick.

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the apparatus of Bennett by changing the bar for a tensioned first elastic cord, the tensioned cord is adapted to deform elastically and resiliently when the tensioned cord is struck with a drumstick, the tensioned cord comprises an elastic cord that is adapted to stretch when impacted by the drumstick as taught in Monici et al. in order to simulate the percussive sounds of a drum when a struck by a drumstick (Monici et al., Column 1, Lines 25-28).

With respect to claim 12, the combination of Bennett and Monici et al. discloses substantially the claimed invention except for the bracket comprising a unitary U-shaped bracket.

Still, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bracket comprising a unitary U-shaped bracket, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 1647 (1893).

With respect to claim 15, Bennett discloses (in Figs. 1-2) an electron pickup (Column 2, Lines 54-60).

With respect to claim 16, Bennett discloses (in Figs. 1-2) the base portion further including one or both of a plurality of bores and slots extending therethrough, the bores and slots being adapted to receive a fastener (8) to secure the drumming apparatus to a

surface.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett (U.S. Patent Publication No. 2004/0025664) in view of Monici et al. (U.S. Patent No. 3,474,180) in further view of Dennis et al. (U.S. Patent No. 6,362,407). The combination of Bennett and Monici et al. discloses substantially the claimed invention except for the drumming apparatus being coupled to a stand and is arranged in a configuration to approximate the configuration of a drum set.

Dennis et al. teaches (in Fig. 7) a drumming practice apparatus (10) being coupled to a stand (20) and is arranged in a configuration to approximate the configuration of a drum set (shown in Fig. 7).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the apparatus of Bennett and Monici et al. by coupling it to a stand and being arranged in a configuration to approximate the configuration of a drum set as taught in Dennis et al. in order to be used when warming up or practicing for a performance with minimal noise level (Column 1, Lines 5-9).

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monici et al. (U.S. Patent No. 3,474,180) in view of Applicant's admitted prior art. Monici et al. discloses substantially the claimed invention except for at least one of the one or more drumsticks comprising aluminum.

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Applicant's admitted prior art teaches (in Page 3, Lines 22-30) the use of aluminum drumsticks.

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the method of Monici et al. by using aluminum drumsticks as taught in Applicant's admitted prior art in order to strengthen the user's forearm and hands (Applicant's admitted prior art, Page 3, Lines 22-25).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ezbicki (U.S. Patent Publication No. 2003/0070533), Nazer (U.S. Patent No. 4,406,208) and Chabal (U.S. Patent No. 4,817,489) disclose apparatuses for practicing drumming similar to Applicant's claimed invention.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edwin A. León whose telephone number is (571) 272-2008. The examiner can normally be reached on Monday - Friday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula A. Bradley can be reached on 571-272-2800, extension 33. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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December 23, 2006